UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8, MONTANA OFFICE
FEDERAL BUILDING, 10 West 15th St, Suite 3200
HELENA, MONTANA 59626

Ref: 8MO

October 5, 2010

Ms. Kathleen Ports
U.S. Fish & Wildlife Service Project Manager
2705 Spurgin Road
Missoula, Montana 59804

and

Mr. Mike O'Herron,
Montana Dept. of Natural Resources and Conservation Project Manager
2705 Spurgin Road
Missoula, Montana 59804

Re: Montana DNRC Forested State Trust Lands Habitat Conservation Plan FEIS (CEQ #20100366)

Dear Ms. Ports and Mr. O'Herron:

The U.S. Environmental Protection Agency (EPA) Region 8 Montana Office has reviewed the U.S. Fish & Wildlife Service (FWS) and Montana Dept. of Natural Resources and Conservation (DNRC) Forested State Trust Lands Habitat Conservation Plan (HCP) and Final Environmental Impact Statement (FEIS) in accordance with EPA responsibilities and authorities under the National Environmental Policy Act (NEPA) and Section 309 of the Clean Air Act (CAA).

We appreciate receipt of the responses to EPA and public comments on the draft EIS and Habitat Conservation Plan that were included in Appendix G of the FEIS. We are pleased that additional conservation measures have been added to the preferred alternative (Alternative 2) in the HCP including:

-Extending riparian timber harvest limitations to all Class 1 streams (fish bearing streams and tributary streams that flow over 6 months per year);

-Increasing the width of the no-harvest buffer zone in the riparian management zone (RMZ) for Class 1 streams from 25 feet to 50 feet;

-Setting a limit on the amount of Class 1 RMZ area that may be harvested at 20 percent of Class 1 RMZ acres for any given EIS aquatic analysis unit. {This limit includes both stands harvested under allowances and stands subject to natural disturbances that reduce an RMZ to non-stocked and seedling/sapling size classes or low stocking densities of poletimber and sawtimber size classes. A DNRC water resource specialist would review all sites where an allowance is proposed, regardless of the number of RMZ acres affected, and DNRC would be required to annually report to the USFWS all circumstances where the allowance is invoked. At a minimum, 80 percent of the RMZ acres harvested would have to meet anticipated LWD target levels, which would be reported annually and analyzed in detail every 5 years.};

-Including a commitment for addressing multiple harvest entries into an RMZ during the Permit term so that multiple entries would only occur as long as (1) the original harvest retains a medium- to well-stocked stand of trees in the poletimber or sawtimber size classes, or (2) the subsequent regeneration results in medium to well-stocked trees in the sawtimber size class, and all re-entries would be required to meet the SMZ Law minimum tree retention requirements;

-Revising the monitoring and adaptive management program to better ensure protection of native fish species from increased stream temperatures. {DNRC will use the most current EPA-approved 303(d) list as the source of information for identifying temperature-sensitive stream reaches where no statistically significant increase in stream temperature would be allowed; and include dual thresholds in three different temperature tiers for maximum allowable increases in stream temperature for HCP fish-bearing streams, to maintain in-stream temperature regimes that support HCP fish species and meet state water quality standards for waters supporting cold-water fisheries.}.

-Including both moderate- and high-risk sites when working with other cooperators to address road problems on sites where DNRC does not have sole road ownership; and revising its commitment AQ-SD1 item (6) from "abandoning" roads to "reclaiming" roads, which requires that roads are left in a more stable condition compared to abandoned roads.

-Additionally, DNRC would continue to extend equipment restriction zones beyond those required under the Montana Streamside Management Zone (SMZ) Law for sites with high erosion risk, including severely burned areas where bare mineral soil is exposed or hydrophobic conditions occur. The HCP would also add a commitment to retain a portion of pre-commercial thinning units in an un-thinned condition in lynx habitat and a shift in the commitment to retain lynx foraging habitat to focus on retention of winter foraging habitat.

While we are pleased that the preferred alternative in the final HCP represents an improvement in the level of water quality, fisheries and aquatic habitat protection currently provided on Montana Forest Trust land, particularly with the additional conservation commitments and HCP revisions in the FEIS, we note that these protections still fall short of the level of aquatic and riparian protection provided on Federal forest lands under the Inland Native Fish Strategy (INFISH) (http://maps.wildrockies.org/ecosystem_defense/Resources_Species_Topics/Fish/INFISH_PACFISH/INFISH_Interim_DN.pdf). For example, the INFISH RMZ width for a perennial fisheries stream is significantly wider than the RMZ proposed in DNRC's HCP (e.g., ~300 feet on each side of the stream channel vs. ~ 100 feet); and timber harvest is more limited within the INFISH RMZ than within the DNRC RMZ (e.g., the DNRC no-harvest buffer is only 50 feet wide and half of the larger trees may be harvested in the remaining RMZ whereas with a few exceptions very limited harvest is allowed within the 300 foot INFISH RMZ). Also INFISH requires that complete watershed analysis be carried out prior to any timber harvest in INFISH riparian areas in priority watersheds and DNRC does not. EPA recommends that riparian forest management avoid any appreciable reduction in site potential shade or wood delivery to the stream in order to avoid adverse impacts to stream temperatures, fisheries habitat and stream stability.

The proposed HCP would also allow construction of 1,100.2 miles of additional road, and would increase road density from 3.1 mi/mi^2 road density to 4.1 mi/mi^2, even though existing road densities on Forest Trust Lands already exceed USFWS road density recommendations for bull trout habitat (http://www.fws.gov/wafwo/species/finalrev.pdf); and it is known that bull trout are exceptionally sensitive to the direct, indirect, or cumulative effects of roads. Although we are pleased that the FEIS states that despite the proposed increase in road miles and road density there would be an estimated 72 percent net decrease in road sediment production on Forest Trust land when road BMPs and other sediment reducing mitigation measures are implemented.

In addition to our concerns about the adequacy of HCP aquatic conservation protections, we remain concerned that the FWS may lack adequate resources to properly monitor and oversee implementation of the proposed 50 year Incidental Take Permit and HCP, and to conduct inspections and monitoring on 548,500 acres of Montana Forest Trust land in addition to all their other activities. Given the uncertainties regarding the adequacy of conservation commitments and FWS resources to monitor and oversee implementation of the 50 year Permit, we continue to believe that it would be prudent for the FWS to consider a shorter term for the Incidental Take Permit. The FEIS states that the FWS will make its final determination of the term of the Incidental Take Permit in its statement of findings completed at the time of Permit issuance. We continue to recommend FWS consideration of a shorter term Permit (e.g., perhaps 25 years with an option to extend the permit if monitoring reports provide documentation that land management prescriptions are successful in improving aquatic habitat adequately to restore and protect bull trout and other HCP fish species).

In summary, while EPA recognizes that the proposed HCP represents an improvement over past management, we are concerned that aquatic conservation protections still fall short of those provided on Federal forest land for protection of water quality, aquatic habitat and aquatic ecological functioning, and HCP fish species. EPA supports the greater level of conservation commitments in HCP Alternative 3 over those in the preferred alternative. We believe Alternative 3 reduces risks to water quality, aquatic habitat and ecological functioning, and HCP fish species, and provides a level of protection more consistent with the conservation and recovery of the HCP fish species. EPA considers Alternative 3 to be the environmentally preferred alternative.

We thank you for the opportunity to review and comment on the HCP and EIS during the NEPA process. If you have any questions please contact Mr. Stephen Potts of my staff in Helena at (406) 457-5022 or in Missoula at 406-329-3313. Thank you for your consideration.

Sincerely,

Julie A. DalSoglio
Director
Montana Office

cc: Larry Svoboda/Connie Collins, EPA 8EPR-N, Denver
Robert Ray/Mark Kelley, MDEQ, Helena